

Exhibit 41

KATHERINE P. BURKE
ANDERSON vs TRUSTEES OF DARTMOUTH

November 19, 2019

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW HAMPSHIRE

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4 * * * * *

5 JOHN ANDERSON, *

6 Plaintiff, *

7 vs. * NO. 1:19-CV-109-SM

8 TRUSTEES OF DARTMOUTH *

9 COLLEGE, *

10 Defendant. *

11 * * * * *

12
13 DEPOSITION OF KATHERINE P. BURKE

14 HANOVER INN

15 2 East Wheelock Street

16 Hanover, New Hampshire

17 November 19, 2019 11:18 a.m.

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21
22 Maryellen Coughlin, RPR/CRR
23

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1 APPEARANCES:

2 Appearing Pro se (Via Zoom):

3 Mark Anderson

4
5 Representing the Trustees of Dartmouth College:

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I N D E X

EXAMINATION

PAGE

BY MR. SMITH

4

BY MR. ANDERSON

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EXHIBITS

NO.

DESCRIPTION

PAGE

None

1 Q. What's the composition of the
2 committee on standards?

3 A. So a hearing panel is two faculty
4 members, one administrative member and two
5 students. The hearing panel composition is drawn
6 from larger pools of faculty members who have
7 been appointed for terms of service on the
8 committee on standards, administrative members
9 who have been appointed by the president's office
10 to serve for particular terms, and students who
11 have either been elected or appointed.

12 Q. What is the role of the chair in
13 the committee on standards process?

14 A. So the chair is responsible for the
15 hearing process itself. The chair is a
16 non-voting member of the committee, so the chair
17 does not participate as a voting member in
18 reaching conclusions about responsibility or in
19 reaching any conclusions about an appropriate
20 sanction where a student has been found
21 responsible.

22 It's the chair's job to during the
23 hearing manage the process, and to follow our

1 process, the chair makes decisions about
2 admissibility of information, sequencing of
3 witnesses, those sorts of things that move a
4 hearing from the beginning to the end of the
5 hearing process, and then the chair is
6 responsible for facilitating the deliberations
7 process, and the chair is also typically the
8 person who informs the student who is appearing
9 before the committee what the committee's
10 decision is, and that typically takes place the
11 day after a hearing occurs.

12 Q. And typically when does a chair get
13 assigned to be involved in a particular
14 disciplinary proceeding?

15 A. Typically it's some period in
16 advance of a hearing. We know that hearings may
17 occur during each week of a regular academic
18 term, but there aren't always cases that are
19 ready for hearings, and we have enough notice to,
20 typically, to take responsibility for decisions
21 about what might go into the case packet or other
22 procedural matters that may come up in connection
23 with a hearing that's been scheduled.

1 Q. For those who might not understand,
2 what is a case packet?

3 A. So a case packet is written
4 material relevant to the charges that the student
5 and the panel members will be talking about.

6 So typically a case packet would
7 include the original letter of allegation from
8 the judicial affairs office, which is the notice
9 letter to the student that the college has
10 information that suggests they may have violated
11 one or more standards of conduct. They're
12 specified in the letter. And provides other
13 procedural information indicating that the
14 process has begun.

15 Typically a case packet would
16 include what we refer to as the statement of
17 rights form which is sort of several pages of
18 formal responses from the student.

19 So if a student has been charged
20 with violating two or three different standards
21 of conduct, the student enters a response, admit
22 or deny, to each of those allegations, indicates
23 whether or not they wish to have an advisor in

1 the process. Those kinds of things, procedural
2 things, so the case packet would include that.

3 And then the case packet would
4 include information that has come to the college
5 in writing that basically sets forth what the
6 case is about.

7 So if safety and security responded
8 to a situation, typically the safety and security
9 report would be included in the case packet. If
10 there were witness statements that had been
11 collected about behavior that the committee was
12 going to be talking about, those witness
13 statements might be included. If there were
14 documents related to the case from some other
15 source, again, that came to the college that were
16 relevant to the allegations, they would be
17 included.

18 And then the student has the
19 opportunity to submit information to be included
20 in the case packet as well. And so the case
21 packet may include all or part of what the
22 student submitted that the student thought was
23 relevant to the discussion the student was going

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1 to be having with the committee. That
2 information is submitted before the case packet
3 is completed. The person who will be the chair
4 for that hearing will review that information and
5 determine whether or not all or part of that
6 information will be included in the case packet.
7 The case packet is finalized, and then it's
8 shared with committee members so that they can
9 introduce themselves to the case in advance by
10 reading the information in the case packet.

11 Q. So if I understand it correctly,
12 the chair has a role in deciding what is included
13 in the case packet and what is not; is that
14 correct?

15 A. Yes. According to our procedures,
16 the chair makes all rulings about admissibility
17 of information and evidence.

18 Q. And once the case packet is
19 finalized, it is shared with the members of the
20 committee?

21 A. The judicial affairs office
22 transmits it to members of the committee so that
23 they can prepare themselves to participate in the

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1 hearing.

2 Q. Okay. Is there anything about the
3 process that you haven't -- the committee on
4 standards process that you think is relevant that
5 you haven't shared with me so far?

6 A. Occasionally we have witnesses
7 participate in the hearing itself. So the
8 committee will certainly be talking with the
9 student or students who are alleged to have
10 violated our standards so that the students have
11 an opportunity to answer the committee's
12 questions about what may or may not have
13 happened, why it may or may not have happened,
14 and other information that is relevant to them in
15 making their decisions.

16 At times there are people in our
17 campus community who actually witnessed something
18 or were a participant in a conversation or some
19 other action or activity that's relevant to the
20 committee's decisions, so our process may also
21 include bringing those witnesses into the hearing
22 room so that the committee members can ask the
23 witness questions about a witness statement they

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1 may have provided or what they observed or what
2 they said or did that's relevant to the process.

3 In our process, the student also
4 has the opportunity to pose to the chair
5 questions for a witness. So typically the
6 committee members ask their questions first of a
7 witness, and then the chair gives the student an
8 opportunity to suggest to the chair questions
9 that the committee members may not have asked
10 that the student thinks are relevant, and then
11 it's the chair's decision, again, in this role,
12 as the chair is the one who decides what's
13 relevant and what's not, the chair will either
14 ask the witness to respond to the question as the
15 student framed it, although the student isn't
16 directly questioning the witness, the chair may
17 reframe the question, or based on whatever the
18 question is, the chair may say to the student, I
19 don't believe that's a relevant question. Do you
20 have anything else to suggest.

21 Q. Were you involved in a committee on
22 standards hearing for allegations that had been
23 made against Mark Anderson?

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1 A. I was.

2 Q. And when did you first become
3 involved in a hearing involving Mark Anderson?

4 A. On the day of the hearing which I
5 believe was January 8th of 2018.

6 Q. How did you become involved in that
7 hearing?

8 A. One of my student affairs
9 colleagues was scheduled to serve as the chair in
10 that case. She became very ill that day, and she
11 appeared in my doorway to say that she wasn't
12 sure she could participate in the hearing and
13 asked me if I was available to substitute if she
14 didn't think she could do it.

15 Q. And what was your response to your
16 colleague?

17 A. I said, "I will do what you need me
18 to do," which meant that I would clear my
19 calendar and make this a priority because we
20 would want a hearing to go forward if it were
21 possible for that to happen, for the hearing to
22 go forward.

23 Q. When you were presented with the

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1 request to participate, what did you do next?

2 A. So in order to be an effective
3 substitute chair, I needed to learn from her what
4 she thought it was important for me to know in
5 terms of decisions she might have made ahead of
6 time. I needed to get a copy of the case packet,
7 which I had not seen or read before then, and I
8 needed to become prepared to host and facilitate
9 the hearing which was scheduled for that
10 afternoon at 2:30, I think. So I had a few hours
11 to familiarize myself with the case to step in as
12 chair.

13 Q. So in that afternoon, did you
14 familiarize yourself with the case packet?

15 A. Yes. The case packet itself was
16 60-some-odd pages, and I didn't do anything else
17 between when I learned that I would be
18 substituting as chair so that I could review the
19 material as closely as possible so that I was
20 ready to facilitate the hearing and ready to
21 facilitate the decisions.

22 Q. What else other than the case
23 packet did you review prior to the hearing?

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1 A. So there was a fair amount of
2 written information that the student had
3 submitted and that my colleague, who had been
4 serving in the role as chair, had determined
5 would not be included in the case packet. I
6 flipped through that very, very briefly. It was
7 a large stack of submissions. As she had made
8 the decision that that material would not be
9 included in the case packet, it was not my role
10 at that point to go back to the very beginning
11 when she might have first learned that she was
12 going to chair the case. My role was to step in
13 where we were. So I very quickly flipped
14 through, but I did not read for content because
15 my primary focus was being sure that I felt
16 adequately prepared to work with the case packet
17 material, which was the material that had been
18 provided to the committee.

19 Q. Who were you replacing as chair of
20 the committee?

21 A. Senior associate dean of student
22 affairs Liz Agosto, A-g-o-s-t-o.

23 Q. Did you speak to Dean Agosto after

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1 you had reviewed the materials?

2 A. I may have. I don't recall
3 specifically. It certainly is possible that in
4 reading the material I had a question about
5 something that I read, but my goal, again, was to
6 prepare to play the role that I was assuming,
7 which was to serve as chair of the process, and
8 given my experience, I felt comfortable with the
9 chairing role of simply trying to get up to speed
10 on the content of the case.

11 Q. Do you have a recollection of what
12 time the hearing was set for on January 8th,
13 2018?

14 A. So the front of the case packet
15 usually indicates the date and time of the
16 hearing, and the front of the case packet says I
17 think 2:30 p.m. that day.

18 Q. Prior to the hearing, did you have
19 the opportunity to meet with Mark Anderson the
20 student who had allegations lodged against him?

21 A. Yes, that's part of my personal
22 practice as chair.

23 Typically a chair hasn't had prior

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1 contact with the student who's appearing before
2 the committee, and it's important to me to be
3 able to meet the student ahead of time. This
4 isn't a legal process. It's a community process.
5 We're going to be sitting across the table from
6 each other. I want to be sure that I've
7 introduced myself and that I've given them just a
8 little bit of information about how I think the
9 hearing is going to go.

10 They may have received information
11 from judicial affairs or the person that they've
12 selected to serve as their advisor in the
13 process, but since I'm going to be sitting in the
14 chair seat, I usually give them a brief overview
15 of how I think the hearing is going to go.

16 I let them know that I'll be
17 watching. If they feel they need to take a break
18 to consult with their advisor or if they're
19 experiencing discomfort in any way and just need
20 to step out for a minute, we talk about how that
21 works.

22 And if there are going to be
23 witnesses in the case, I briefly explain here's

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1 how we do that: You don't question a witness
2 directly. You propose a question to me. I'll
3 let you know if I'm going to ask the witness to
4 answer it or reframe it. If I say to you that's
5 not a question that I think is relevant, or if I
6 say I'm not going to ask the witness that
7 question, do you have another question to
8 suggest, I'm telling the student you haven't
9 don't anything wrong. I want you to be prepared
10 for that. My job is to pay attention to our
11 process, and so if you suggest a question and I
12 say I'm not going to ask it, we just move on.
13 You don't need to worry about that being a moment
14 where something terrible has happened. We're
15 just following our process.

16 Q. Who was Mr. Anderson's advisor for
17 this hearing?

18 A. It was Ann Hudak, who is one of our
19 undergraduate deans.

20 Q. Can you tell me what the substance
21 of the conversation was between you and
22 Mr. Anderson prior to the hearing?

23 A. So I introduced myself. I

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1 explained that I was stepping in as the chair in
2 the hearing. I did sort of have a usual routine
3 of things, as I just described, that I bring up
4 when I'm talking to a student, and I also let
5 Mark know that I was going to focus the attention
6 of the panel, and the purpose of the hearing was
7 to focus on the behavior that was alleged in the
8 charge letter, so the behavior that was alleged
9 for January, February, March and May of 2017,
10 that it was the committee's job to learn what
11 they could about those behaviors that were the
12 subject of the charges so that it could reach a
13 conclusion, and that that's where we were going
14 to focus.

15 Q. Okay. And did you have a
16 discussion with him about the other materials
17 that he had proposed including in the case packet
18 but which Dean Agosto had said would not be
19 included?

20 A. We did. I confirmed that we were
21 not going to be including those materials in the
22 discussion. I let him know that it was going to
23 be important to stay focussed on the behavior

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1 because that was the committee's function and
2 responsibility. I let him know that if he --
3 that in my job as chair, if he moved away from
4 the focus of the hearing on his behavior to other
5 areas that were not germane to the committee's
6 decision about whether he violated our standards
7 and what sanction might be appropriate, I let him
8 know how I was going to handle it, which was I
9 was going to tell him that we were not going to
10 pursue that line of discussion or questioning or
11 whatever it might be, and that I would refocus
12 him in the hearing back on the behavior. He
13 became concerned about that.

14 Q. What was his response?

15 A. He asked me if I had read all of
16 the material that had been excluded, and I told
17 him I hadn't read it all. I hadn't. He told me
18 that other people had told him that he could say
19 whatever he wanted to say in the hearing about
20 that. I said, "I'm stepping in today. The focus
21 of the hearing is your behavior January,
22 February, March and May as alleged in the
23 allegation letter. My job is to pay attention to

1 our process, and so that's where I'm going to
2 keep the focus today."

3 Q. And did that require a period of
4 time in which Mr. Anderson had to re-collect
5 himself prior to the hearing?

6 A. He became very upset and agitated
7 about that. He wanted to do more than I was
8 telling him I was going to allow as part of our
9 process in the hearing. He was agitated enough
10 that I was concerned for him and for his state of
11 mind, and I didn't want to proceed with the
12 hearing, notwithstanding that we had identified
13 that I would step in as chair, if he were in an
14 emotional state where he couldn't participate
15 effectively on his own behalf. I was concerned
16 about that for him. So we did take a break, and
17 he spent some time with his advisor and others.
18 And I told him if he wasn't in a state where he
19 could participate, we could arrange to have him
20 go home, and we could reschedule the hearing, but
21 that I wanted to be sure he felt he could proceed
22 given what I was telling him about how the
23 hearing was going to go.

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1 So we didn't actually start the
2 hearing until after 4:30 that afternoon while
3 that was unfolding and we were confirming that he
4 felt he was ready to participate and I was
5 confirming myself that it was responsible and
6 okay for us to go ahead.

7 Q. Okay. Was your communication to
8 him about possible delaying the hearing basically
9 because you were concerned about his mental state
10 going forward with the hearing at that time?

11 A. Yes. Yes, it was. I didn't --
12 it's a difficult thing for students to
13 participate in disciplinary hearings if they're
14 not in a state of mind where they can engage in
15 discussion with panel members. That's a concern.
16 And I didn't want to proceed if he wasn't going
17 to be able to participate on his own behalf in a
18 way that seemed appropriate.

19 Q. And at some point in time did the
20 hearing proceed?

21 A. It did.

22 Q. And can you generally discuss with
23 me how the process unfolded in the hearing?

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1 A. So maybe I'll do a bit of a general
2 arc of a hearing and then apply it here.

3 Q. Yes.

4 A. So in any disciplinary hearing, we
5 are sitting around a long rectangular table. The
6 student is present with the advisor that they've
7 identified, if they have an advisor, the five
8 committee members, two faculty members, the
9 administrative representative --

10 THE COURT REPORTER: Can you go a
11 little slower?

12 A. Sure. There are five committee
13 members on a hearing panel. Two of them are
14 members of the faculty, one of them is an
15 administrative representative from a pool
16 appointed by the president and two of them are
17 students. When we begin a hearing, part of what
18 the chair needs to do is to set the stage for the
19 process. This is not a legal proceeding. This
20 is an administrative proceeding where these
21 representatives of the community engage in
22 dialogue with the student and other members of
23 the community about possible violations of

1 community standards. So we set that stage. I
2 invite the community members to introduce
3 themselves, so that we're all part of the
4 conversation and the student knows who they're
5 talking to, and the faculty members have
6 introduced themselves and the other panel members
7 have introduced themselves.

8 We go through some procedural
9 things. We confirm that the student received the
10 charge letter and the case packet. We confirm
11 that the information in their statement of rights
12 form is accurate as of the time that we're having
13 the hearing. The chair reminds the student that
14 the college expects all students participating in
15 disciplinary proceedings to be completely
16 truthful, and we talk a little bit about what
17 that means. You may say I don't know. You may
18 decline to answer a question. But if you're
19 providing information, you're providing
20 information that's accurate and complete. You're
21 not making misrepresentations. So we go through
22 that process, which happens with all students,
23 and then typically we would give the student

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1 who's appearing before the committee a chance to
2 make an opening statement. They get the first
3 word. They get the last word.

4 So we did that. We did all of that
5 here in this hearing. The student made an
6 opening statement. Because we were starting
7 after 4:30 and the one witness that the student
8 and the panel had identified as being someone
9 that they wanted to speak to had limited
10 availability --

11 THE COURT REPORTER: And the
12 student?

13 MR. SMITH: I'm sorry, you do have
14 to --

15 A. I will slow down. So because we
16 were starting after 4:30, we had one witness who
17 the student had proposed appear before the
18 committee, and the committee wanted to speak to
19 whose availability was limited. So the student
20 made his opening statement, and instead of
21 engaging in more questioning of the student, at
22 that point we asked the witness to come in, and
23 the committee members asked her questions. The

1 student posed a couple of questions. We excused
2 her, and then we went back to questions that the
3 committee members had for the student.

4 When those questions were
5 exhausted, we gave the student an opportunity to
6 have the last word through the student's closing
7 statement, and then we ended the hearing and
8 moved into executive session.

9 Q. And other than the student and the
10 advisor and the members of the committee, who
11 else was present at the hearing?

12 A. As is the case for all of our major
13 misconduct hearings, a representative of the
14 judicial affairs office is present for the
15 hearing, and in this case, that was Adam
16 Knowlton-Young.

17 Q. And what is the role of a judicial
18 affairs office employee during the hearing?

19 A. During the hearing they're
20 basically providing logistical support for the
21 process. They're turning the tape recording on
22 and off. If there are multiple witnesses,
23 they're leaving the hearing room and making sure

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1 that witnesses are ready to appear in a timely
2 way. They -- if the chair needs something, I, as
3 chair, could turn to Adam and say, Can you get me
4 this because I can't get up right now. So it's
5 logistical support.

6 Q. Once you got into executive
7 session, what was the issue that you initially
8 considered?

9 A. So committee deliberations
10 typically take place in two phases. The first
11 phase is about the question of whether or not the
12 student has indeed violated one or more of the
13 standards of conduct that they were charged with
14 violating.

15 So the first topic for the panel
16 members is do they agree that the student was
17 responsible. In a case where a student has
18 admitted, do they agree that the student is
19 responsible for violating standards of conduct.
20 If they find the student responsible, and only
21 if, then they move to a discussion about what the
22 appropriate sanction would be based on the nature
23 of the behavior of the student in question.

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1 Q. And this was a hearing that
2 occurred after a previous hearing had been
3 reviewed and there had been a decision that there
4 should be a second hearing. Is the committee
5 made aware of the prior hearing by the school?

6 A. No. There are only limited
7 circumstances in which that would occur. That
8 would occur if there were a request for review
9 and there were new information that wasn't
10 reasonably available at the time of the first
11 hearing that the reviewing officer had decided
12 the same panel should consider.

13 Q. Mm-hmm.

14 A. That was not this case. This was,
15 as I understood it, a fresh hearing, not related
16 to any previous proceedings.

17 Q. Okay. So did the committee on
18 standards review whether Mark Anderson had
19 violated community standards?

20 A. Yes. There were two community
21 standards included in the letter of allegation
22 that he had received, one of them was Standard 2,
23 and the other was Standard 6. Standard 6 is the

1 community standard that prohibits violating
2 local, state or federal law.

3 If we have no evidence of a
4 conviction at the time of a hearing, we simply
5 enter no finding on the violation of law charge.
6 So we entered no finding, and we -- I think we
7 explained at the very beginning of the hearing,
8 because there was no evidence of a conviction,
9 the focus of the hearing was going to be on the
10 Standard 2 allegation.

11 The committee concluded that he had
12 indeed violated Standard 2 during the first part
13 of the deliberations. So they believed that he
14 had engaged in the behaviors alleged in January,
15 February, March and May.

16 Q. So Mr. Anderson had admitted --

17 A. Yes.

18 Q. -- that he had violated that
19 standard, but the committee ended up reviewing
20 that again to see whether they concur with the
21 admission; is that right?

22 A. Yes, but briefly so. Typically, in
23 a situation like that, if the student has

1 admitted, the student's admission is accepted.
2 You confirm that. And they believed that he had
3 violated Standard 2. So they confirmed that he
4 was responsible for violating standards of -- our
5 standard of conduct.

6 Q. And prior to going into
7 deliberative session, you had confirmed with
8 Mr. Anderson that he did admit to the violation
9 of Standard 2, correct?

10 A. Yes, as part of the sort of
11 preamble that I was describing earlier at the
12 beginning of the hearing when we're going through
13 the statement of rights form that is included in
14 the packet, he had admitted on the statement of
15 rights form that he had violated Standard 2. So
16 that had been confirmed at the very beginning of
17 the hearing, and throughout the hearing, as he
18 and the committee were discussing his behavior,
19 there were also questions from the committee
20 members clarifying what he felt he was admitting
21 to, so that had been also the subject of
22 discussion during the hearing.

23 Q. Okay. And during the deliberative

1 session, were sanctions considered?

2 A. After the finding of
3 responsibility, yes, and the committee's ultimate
4 conclusion was that given the nature of the
5 behavior, it was behavior that should lead to
6 permanent separation from the college.

7 Q. And what was the basis for that
8 conclusion, if you recall?

9 A. So the basis for the conclusion is
10 included in the case notes for the case, which we
11 typically prepare after each case for the record.
12 The committee felt that he had engaged in
13 harassing behaviors in January, February, March
14 and May, that his behavior was particularly
15 egregious. They did not believe that during the
16 hearing he displayed an understanding of what our
17 community expectations are or a capacity to
18 conform his behavior to those expectations going
19 forward. And because of those conclusions, they
20 decided that he should be permanently separated
21 from Durham.

22 Q. Okay. And what was the role --
23 what was your role in that process?

1 range of sanction for the behaviors that were the
2 subject of the case very generally and very
3 briefly, and as the panel members themselves
4 know, cases that occur before a panel of the
5 committee on standards have been determined to be
6 cases in which, if the student is found
7 responsible, temporary or permanent removal from
8 the community may be an outcome.

9 Q. So once the sanction had been
10 determined, what is the process after the hearing
11 closes?

12 A. So an outcome meeting had already
13 been scheduled for the following day, meaning me,
14 in my role as chair, the student and the
15 student's advisor were scheduled to meet. We
16 were scheduled to meet in the same conference
17 room in which the hearing had occurred, and it
18 was my job at that meeting to convey to the
19 student what the committee's decision was. The
20 meeting was scheduled for late the next morning,
21 that would have been the 9th. I had the outcome
22 letter, which is a typical letter generated by
23 the judicial affairs office, which is the

1 official written notification. That conversation
2 usually includes an explanation of the
3 committee's finding: Here's what they did.
4 Here's anything they wanted you to know about
5 their conclusion. It usually includes a reminder
6 to the student that they have the right to
7 request a review and a brief explanation of what
8 that process is. You don't have to decided
9 today, but you do have the right to request
10 review. Here's a brief explanation of that
11 process. Your advisor, the judicial affairs
12 office can help you with that.

13 And then typically when I'm doing
14 an outcome meeting, I also say to the student
15 that if it would be helpful for one of their
16 family members to hear from me as chair, that I
17 could be available to have a conversation with
18 them about that, and that conversation would not
19 normally be a substantive one. It would simply
20 be I was the college representative responsible
21 for the hearing process --

22 Q. Mm-hmm.

23 A. -- and if they need to ask

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1 chair, stepping in as substitute hearing chair,
2 was mine. It was not anyone else's.

3 Q. On the day of my hearing I raised
4 to you that I had repeatedly been told by
5 administrators of the college that the only
6 place, and the place that I was designated to
7 raise concerns that my disciplinary hearing
8 process had not been performed in accordance with
9 the college's procedures were -- was my second
10 COS hearing. Do you remember me pleading with
11 you that that was the case and to allow me to
12 share information these administrators had told
13 me I would be allowed to share at the COS
14 hearing?

15 MR. SMITH: Objection. You can
16 answer.

17 A. I remember discussing this with you
18 when I came to meet you before the hearing was to
19 begin that afternoon at 2:30. The committee on
20 standards hearing panel's responsibility is to
21 review the letter of allegation and the materials
22 that are included in the case packet and to
23 engage in questioning during the hearing process

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1 to inform themselves about the alleged violation.

2 In this case, this committee's
3 responsibility was limited to the information in
4 the case package, which was that you were alleged
5 to have violated and had admitted violating
6 Standard 2 in January, February, March and/or May
7 of 2017. That was the focus, and I remember
8 telling you that the focus of the hearing was
9 about your behavior as alleged in the materials
10 that you had received for that case. Their focus
11 was to be on the behavior, and my job, as chair,
12 was to ensure that our focus remained on the
13 alleged behavioral violations to which you had
14 admitted. And the responsibility of the
15 committee was to determine whether they agreed
16 that you had violated Standard 2, and if so, what
17 the appropriate sanction would be. That's what
18 the committee was responsible for. That's where
19 I kept the focus of the hearing. That was my
20 decision.

21 Q. Very well. Yes, so you remember
22 correctly that I was told in advance of the
23 hearing the committee would not deliberate

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1 bases of your decision or reasoning to --

2 THE COURT REPORTER: All the bases
3 of your decision?

4 Q. Oh. Do you remember all -- sorry.
5 I looked for the letter, and I did not find it.
6 But, yes, you wrote that you perceived that the
7 remorse I showed during the hearing was not
8 genuine. Do you remember any other details from
9 the letter?

10 MR. SMITH: Objection. You can
11 answer.

12 A. So I don't think that's what I
13 wrote, and in writing a case note, I'm not
14 speaking for myself as a person, as an
15 individual. I'm writing a very brief summary as
16 the chair. The case notes reflect what happened
17 in very general terms during the hearing and
18 generally the basis for the decision. So the
19 words on the page of that case note are about
20 what was said during that hearing and what was in
21 the case packet. And in the paragraph that would
22 have reflected the committee's thinking, the
23 committee's thinking would have been based on

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1 what was said and what occurred during that
2 hearing and what was in the case packet related
3 to the charges before them.

4 Q. Mm-hmm. Off the top of your head,
5 you said you don't think you said this, but can
6 you remember anything that I did, any specific
7 behaviors or actions that suggested that my
8 remorse was not genuine?

9 A. I think in the case note there is
10 reference to the committee's perception -- I'm
11 going from memory here -- that although you said
12 this behavior -- that you understood this
13 behavior -- I think you described it in various
14 ways yourself -- was in violation and that you
15 accepted responsibility, I think that statements
16 that you made during the hearing led the
17 committee to question whether you fully
18 understood your responsibility or whether you
19 felt that the responsibility for the situation
20 that you were in was attributable to others
21 rather than you.

22 Q. And that led to deliberation of
23 what sanction would be suitable, correct?

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1 information from the case, right?

2 A. The case note is a brief summary.
3 It is not a transcript. It is not a lengthy
4 analysis, nor is it intended to be. It is a
5 brief summary for the record of what the case was
6 about and what the committee concluded.

7 Q. The ultimate basis for its
8 conclusion, correct?

9 A. That's what I just said.

10 Q. Okay. Okay, so -- I really have to
11 go to the bathroom again, but I have one question
12 I'd like to ask. Let me see if I can do it.

13 Oh, okay. So like in my case,
14 right, in the case note I believe that there were
15 references to the specific statements that I made
16 and specifically actions I performed which the
17 committee --

18 THE COURT REPORTER: I'm sorry.
19 Specific --

20 Q. Sorry. In the case note, as you
21 said, you described actions, specific actions,
22 which most heavily influenced the committee's
23 decisions, right? The actions that you put in